Amendments to the Drawings:

The attached five (5) sheets of drawings include changes to Figures 1-5. These sheets replace the original sheets including Figures 1-5.

In Figure 1, one occurrence of reference number 104 has been deleted. In Figure 2, reference numbers 102, 104, 202, 204, and 208 have been added. In Figure 3, reference numbers 102 and 106 have been added. In Figure 4, reference number 116 has been added.

Attachments: Replacement Sheets

REMARKS

In response to the Official Action mailed September 18, 2008, Applicant submits this Response. A complete listing of all pending claims is submitted herewith.

In this Amendment, Applicant amends the drawings, the specification, and claims 1 and 2, and addresses the Examiner's rejections. Support for amendments can be found throughout the application. Amendments to the claims are being made solely to expedite prosecution and do not constitute an acquiescence to any of the Examiner's objections or rejections. Applicant's silence with regard to the Examiner's rejections of the dependent claims constitutes a recognition by the Applicants that the rejections are moot based on Applicants' Remarks relative to the independent claim from which the dependent claims depend. Applicant reserves the option to further prosecute the same or similar claims in the present or a subsequent application. Claims 1-10 are pending.

For reasons to be set forth below, it is requested that the rejections be withdrawn and that the claims be allowed to issue.

A. Oath/Declaration

In the Office Action, the Examiner objects to the oath filed on September 21, 2004 (hereinafter the "Oath"). In particular, the Examiner states that the language reciting "37 CFR 1.56(a)" should be replaced with "37 CFR 1.56" in a substitute oath.

The Examiner's objection is respectfully traversed, and the Applicant submits that the Oath is proper. First, the Oath's recitation of "37 CFR 1.56(a)" makes a reference to the "duty to disclose...as defined *in this section*," i.e., 37 CFR 1.56 (emphasis added). Accordingly, the Oath as currently executed refers to the proper section of the Federal Rules, and is in compliance with 37 CFR 1.63 for at least for this reason. Moreover, in the "Duty of Disclosure Language Set Forth in Oaths or Declarations Filed in Nonprovisional Patent Applications" by Under Secretary Jon W. Dudas dated January 22, 2008 (hereinafter the "Notice," and attached hereto as Exhibit A), the Patent & Trademark Office explicitly stated that it would accept oaths having such

language as currently recited in the Oath:

> "For pending applications, the Office is hereby *sua sponte* waiving the express language requirement of 37 CFR 1.63(b)(3), where the oath or declaration was filed prior to June 1, 2008. The express language of 37 CFR 1.63(b)(3) is waived only to the extent necessary such that an oath or declaration containing the 'material to examination' or 'in accordance with 37 CFR §1.56(a)' language, or both, will be accepted as acknowledging the applicant's duty to disclose material to patentability as defined in 37 CFR 1.56."

Accordingly, since the Oath was filed before June 1, 2008 and contains the language referred to in the above-identified Notice, the Patent & Trademark Office has waived the express language requirement, and Applicant requests that the objection be withdrawn with respect to the Oath.

B. Drawings

The Examiner has objected to Figures 1-4. Amended Figures are being submitted herewith. In particular, Figure 1 has been amended to delete one of two occurrences of reference number 104. In Figure 2, reference numbers 102, 104, 202, 204, and 208 have been added. In Figure 3, reference numbers 102 and 106 have been added. In Figure 4, reference number 116 has been added. No new matter has been added by such amendments. Applicant requests withdrawal of the objections to the drawings.

C. Claim objections

The Examiner has objected to claim 2 for informalities. Claim 2 has been amended to address this typographical error and has not been amended for reasons relating to patentability. Applicant requests withdrawal of the objection with respect to claim 2.

D. Claim rejections under 35 U.S.C. §112

1. Rejections under 35 U.S.C. §112, first paragraph

Claims 1-10 are rejected under 35 USC §112, first paragraph, for alleged failure to comply with the written description requirement. Applicant respectfully disagrees and traverses the rejection.

In the Office Action, the Examiner contends that the recitation of claim 1, i.e., that the

display is mounted "so as not to protrude from the frame" is not supported by the specification. In support of this assertion, the Examiner relies on Figure 1. However, Applicant refers the Examiner to an embodiment of the subject matter illustrated in Figure 2 of the application. Figure 2 clearly illustrates an embodiment having a frame and monitors, in which "the at least one display [is] mounted in the anesthesia machine so as not to protrude from the frame." Accordingly, claim 1 complies with 35 USC §112, first paragraph. Claims 2-10 depend from claim 1 and are allowable at least based on their dependence from claim 1. Withdrawal of the rejection is respectfully requested.

2. Rejections under 35 U.S.C. §112, second paragraph

Claims 1-10 are rejected under 35 USC §112, second paragraph, for alleged indefiniteness. Claim 1 has been amended merely to advance the application to allowance, thereby obviating the rejection with respect thereto.

Accordingly, claim 1 complies with 35 USC §112, second paragraph. Claims 2-10 depend from claim 1 and are allowable at least based on their dependence from claim 1. Withdrawal of the rejection is respectfully requested.

E. Claim rejections under 35 U.S.C. §102

Claims 1-5, 7, 9, and 10 are rejected under 35 USC §102(b) as being allegedly anticipated by U.S. Patent Publication No. 2002/0013640 to Phoon et al. (hereinafter "Phoon.") Applicants respectfully disagree and traverse the rejection.

Claim 1 is directed to an anesthesia machine. Claim 1 includes an anesthesia machine frame and at least one display adjustably attached to the frame, the at least one display mounted to the frame so as not to protrude from the frame.

Phoon neither discloses nor suggests an anesthesia machine, including, among other things, "an anesthesia machine frame" and "at least one display mounted to the frame so as not to protrude from the frame." In contrast, Phoon describes a "computerized medication dispensing station" that includes a cabinet 102 (see, [0036], Figure 1). Placed on top of the cabinet 102 is a rotating extension monitor stand 124 which "makes it easy to view the monitor 118" attached thereto (see, [0042] [0046], Figures 1 and 4a).

Accordingly, Phoon neither discloses nor suggests an anesthesia machine including "an

anesthesia machine frame" and "at least one display mounted to the frame so as not to protrude from the frame." Since Phoon neither teaches nor suggests an anesthesia machine including "an anesthesia machine frame" and "at least one display mounted to the frame so as not to protrude from the frame," Phoon cannot and does not teach or suggest an anesthesia machine as claimed in independent claim 1. Claim 1 is therefore allowable at least for these reasons. Claims 2-10 depend from claim 1, and are allowable at least based on their dependence from claim 1. Withdrawal of the rejection under 35 USC §102(b) is respectfully requested.

F. Claim rejections under 35 U.S.C. §103

1. Rejection under 35 U.S.C. §103(a) over Phoon in view of Tsai

Claim 6 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Phoon in view of U.S. Patent No. 6,644,874 to Tsai. Applicant disagrees and traverses the rejection.

Claim 6 depends from claim 1, which is allowable as discussed hereinabove. Claim 6 depends from claim 1, and is allowable at least based on its dependence from claim 1. Withdrawal of the rejection under 35 USC §103(a) is respectfully requested

2. Rejection under 35 U.S.C. §103(a) over Phoon in view of Huilgol

Claim 8 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Phoon in view of U.S. Patent No. 5,708,561 to Huilgol. Applicant disagrees and traverses the rejection.

Claim 8 depends from claim 1, which is allowable as discussed hereinabove. Claim 8 depends from claim 1, and is allowable at least based on its dependence from claim 1. Withdrawal of the rejection under 35 USC §103(a) is respectfully requested

CONCLUSION

On the basis of the foregoing Remarks, Applicant respectfully submits that the pending claims 1-10 of the present application are allowable over the prior art of record, and formal allowance of the application is earnestly solicited.

Applicant believes that there is no fee required with this communication. However, if any fees are required, the Commissioner is hereby authorized to charge payment of any fees relating to this communication to Deposit Account No. 02-4377.

Respectfully submitted,

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EXHIBIT A

Duty of Disclosure Language Set Forth in Oaths or Declarations Filed in Nonprovisional Patent Applications

Summary:

The United States Patent and Trademark Office (Office) will no longer accept as complying with 37 CFR 1.63(b)(3) an oath or declaration that does not acknowledge a duty to disclose information material to patentability as defined in 37 CFR 1.56. All oaths or declarations filed on or after June 1, 2008, will be required to include the language expressly set forth in 37 CFR 1.63, including that in 37 CFR 1.63(b)(3). This notice applies to oaths or declarations filed in all nonprovisional patent applications, including reissue applications.

Background:

Current 37 CFR 1.63 sets forth the requirements for an oath or declaration filed in a nonprovisional patent application. 37 CFR 1.63(b)(3) sets forth what the person making the oath or declaration must state when acknowledging the duty of disclosure. Specifically, 37 CFR 1.63(b)(3) requires persons making an oath or declaration to state that they acknowledge their duty to disclose to the Office all information known to the person to be "material to patentability as defined in § 1.56." This language is incorporated in: 37 CFR 1.153, which sets forth the requirements for an oath or declaration in a design application; 37 CFR 1.162, which sets forth the requirements for an oath or declaration in plant patent applications; and 37 CFR 1.175 which sets forth the requirements for an oath or declaration in a reissue application.

In 1992, the Office amended 37 CFR 1.63 to conform to amendments made in 37 CFR 1.56. See Duty of Disclosure, 57 FR 2021 (January 17, 1992) (final rule). The amendments to 37 CFR 1.63(b)(3) resulted in "material to patentability as defined in § 1.56" replacing "material to the examination of the application in accordance with § 1.56(a)." Despite this amendment to 37 CFR 1.63(b)(3), some applicants in their oaths or declarations continue to use "material to the examination of the application" in place of "material to patentability," and "in accordance with § 1.56(a)" in place of "as defined in § 1.56." In response to proper objections made during the examination of pending patent applications, practitioners have argued that the oaths and declarations executed by applicants with the outdated language in question are proper and meet the requirements set forth in 37 CFR 1.63 in view of Comment 38 and the accompanying Reply in the 1992 Final Rule. See Duty of Disclosure at 2027. Additionally, these practitioners have argued that the outdated language should be accepted because the Office has not routinely enforced strict compliance with current 37 CFR 1.63, as evidenced by the number of pending patent applications and issued patents containing oaths or declarations with the outdated "material to examination" and "in accordance with 37 CFR 1.56(a)," language.

Revised Procedure:

With this Notice, the Office is putting applicants and their representatives on notice that compliance with the express language of 37 CFR 1.63 will now be required. Additionally, to the extent the Reply to Comment 38 in the 1992 Final Rule authorized the continued use of the "material to examination" and "in accordance with 37 CFR 1.56(a)," language, this authorization it is hereby rescinded, and reliance on the Reply to Comments 38 will no longer be accepted. If an oath or declaration filed on or after June 1, 2008, does not include the express language set forth in 37 CFR 1.63(b)(3), the Office will object to the oath or declaration as failing to comply with 37 CFR 1.63. A supplemental oath or declaration pursuant to 37 CFR 1.67 will then be required.

For pending applications, the Office is hereby *sua sponte* waiving the express language requirement of 37 CFR 1.63(b)(3), where the oath or declaration was filed prior to June 1, 2008. The express language of 37 CFR 1.63(b)(3) is waived only to the extent necessary such that an oath or declaration containing the "material to examination" or "in accordance with § 1.56(a)" language, or both, will be accepted as acknowledging the applicant's duty to disclose information "material to patentability" as defined in 37 CFR 1.56.

For continuing applications filed under 37 CFR 1.53(b), other than continuation-in-part applications, the Office will accept an oath or declaration that contains the outdated language if the oath or declaration otherwise complies with 37 CFR 1.63, and either: (1) was filed prior to June 1, 2008; or (2) is being filed in a continuation or divisional application in which a claim for benefit under 35 U.S.C. 120 has been made to a prior-filed copending nonprovisional application, and the oath or declaration is a copy of the previously accepted oath or declaration that was filed prior to June 1, 2008.

For issued patents, the Office is hereby waiving *nunc pro tunc* the express language requirement of 37 CFR 1.63(b)(3), where the oath or declaration was filed prior to June 1, 2008. As stated above, the express language of 37 CFR 1.63(b)(3) is waived only to the extent necessary such that an oath or declaration containing the "material to examination" or "in accordance with § 1.56(a)" language, or both, will be accepted as acknowledging the applicant's duty to disclose information "material to patentability" as defined in 37 CFR 1.56. Any supplemental oath or declaration filed for an issued patent may simply be placed in the patent application file without review or comment.

While not required, patentees and applicants are free to submit newly executed oaths or declarations with the language expressly set forth in current 37 CFR 1.63(b)(3), in accordance with 37 CFR 1.67.

Applicants are advised that, notwithstanding the waiver in the preceding paragraphs, an applicant who has not disclosed information that is material to patentability as defined in current 37 CFR 1.56, because it was believed that the information was not "material to examination," should disclose such information in order

to discharge the applicant's duty of disclosure as required by 37 CFR 1.56, and should file a supplemental oath or declaration acknowledging that duty of disclosure.

Questions about this notice may be directed to the Office of Patent Legal Administration at (571) 272-7701 or electronic mail message to PatentPractice@uspto.gov.

Date: 11/22/08

JON W. DUDAS
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office